IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No.388 of 2000

Date of Decision : September 3, 2007

State of H.P. …Appellant.

Versus:

Om Singh & another …Respondents.

***Coram*:**

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. Ashok Chaudhary, Addl. Advocate General.

For the respondents : Mr. Ramakant Sharma, Advocate

Sanjay Karol, J. (Oral).

This present appeal arises out of the judgment dated 28.1.2000 passed by the Judicial Magistrate Ist Class, Kasauli in case No. 138/2 of 1993/97 titled as State of H.P. v. Om Singh and another, acquitting the accused of the offences u/s 325, 323 and 506 read with Section 34 IPC.

On 31.10.1997, a complaint was got filed by PW-1 that on 31.10.1997 at about 3 p.m., on his way back from attending a cremation of a relative, he was assaulted by the accused persons near village Dholar Nullah. Accused Prithvi

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Singh and Om Parkash after talking to him, started abusing and then accused Om Singh hit him with a blow on his face which resulted into breaking of his tooth of the upper jaw and accused Prithvi Singh hit the complainant with the blow in the left eye and caused injury on the lower side of his eye. The complainant was rescued by Smt. Surjit Kaur (PW-7), Saraswati and Summy (both not examined by the prosecution). The accused persons threatened the complainant that they would kill him in future. Based on the said complaint, FIR No. 92/97 dated 31.10.1997 was registered with the Police Station, Barotiwala u/s 325, 323 and 506 read with Section 34 IPC.

Investigation was carried out by HC Babli Ram (PW-9) who, after preparing the site plan Ext.PW-9/B, recording the statements of the witnesses u/s 161 Cr.PC Ext.PW-9/C, getting the complainant medically examined, obtained medico legal certificate Ext.PW-2/A and also the revenue record Ext.PW-1/A, and then filed the challan in the Court.

The accused persons were summoned to appear and after complying with the provisions of Section 207 Cr.PC, they were charged for the offences u/s 325, 323 and 506 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

Nine witnesses were examined by the prosecution. Thereafter, statements of both the accused persons

u/s 313 Cr.PC were recorded in which they pleaded innocence but, however, did not lead any defence evidence.

The Court below, after examining the statements of the witnesses acquitted the accused persons on the ground that there have been major contradictions in the statements of the witnesses; prosecution suppressed material evidence and material witnesses were not examined; the stones taken in possession by the police during the course of investigation as deposed by PW-1, have not been produced on record; the investigation was tardy inasmuch as the blood stained clothes were not taken into possession and got chemically examined during the course of investigation.

In the present appeal, learned counsel for the appellant has argued that there was nothing on record to show that the witnesses were inimical towards the accused and, therefore, there was no occasion for them to depose falsely. Statements of the witnesses would show that the Court below has seriously erred in arriving to the reasoning and conclusion, which is not only perverse but also not borne out from the material on record. Non-examination of the material witnesses, as has been wrongly held by the Court below, would not vitiate the trial as they would have only repeated the version which was already on record.

In ***Chandrappa and Others*** v. ***State of Karnataka***, (2007(2) SCC Criminal 325), the Apex Court has

laid down the following principles to be kept in mind by the Appellate Court in deciding the appeal against an order of acquittal:-

> "An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court."

Complainant Jasbinder Singh (PW-1) has been examined. Perusal of his statement shows that there are major improvements from his statement recorded u/s 161 Cr.PC, and he has contradicted himself at various places. His deposition would show that no offence for which the accused have been charged is made out. In the FIR, he has specifically stated that Om Parkash had hit him which resulted into breaking of his tooth of the upper jaw and Prithvi Singh had hit him with a blow on the left eye resulting into injury on the lower side of the eye but in Court, he has deposed only with regard to the breaking of tooth. He has not stated as to which of the accused had hit him. In his cross-examination, he deposed that he has not identified the tooth as the same was not shown to him in Court. He has

stated that there was no person at the time when the alleged tussle took place between him and the accused persons. This contradicts the statements of other witnesses who have deposed that they were present. He has further contradicted himself with regard to the handing over of the tooth to the police. In his examination-in-chief, he has stated that he handed over the tooth to the police whereas in the cross-examination he has deposed that it was the police who had found the tooth after searching for the same. He has deposed that the police had collected 5 to 10 stones, which have been concealed by the police and are not part of the record. According to him, all of his clothes were fully drenched with blood, however, the police during investigation has not taken into possession either the blood stained clothes or the blood sample. His statement with regard to the recovery of tooth importantly has been contradicted by Shri Mangat Ram (PW-6) who infact has gone to the extent of saying that the tooth recovered may be that of an animal. Importantly, as per the version of PW-1, this witness had accompanied him to the police station to lodge the FIR.

From the statement of Dr. Rakesh Malhotra (PW-2), it is clear that the accused had not suffered any injury except that his tooth had broken. Even though PW-2 has deposed that the complainant had injuries in his eye also, however, the complainant himself has contradicted this witness both with regard to presence and injury.

HC Babli Ram (PW-9) has deposed that there was no trace of blood at the spot as well as on the clothes. He has also stated that the tooth which was taken into possession during investigation, has not been shown to him in Court. As per the version of Smt. Surjit Kaur (PW-7), there were other persons also who were present at the time when the tussle took place between the parties and the accused beat up the complainant. It has come on record that Smt. Maya Devi (PW-3), Shri Bidhi Chand (PW-5), Shri Mangat Ram (PW-6) and Smt. Surjit Kaur (PW-7) are all close relatives of PW-1. There is no explanation forthcoming as to why independent witnesses were not examined by the prosecution in the Court. Police had not made any effort to examine the independent witnesses. PW-1 in his cross-examination has admitted that there is a dispute pending between the accused persons and one of his aunts, therefore, animosity between the parties and reason to falsely implicate is there.

I have examined and considered the statements of the witnesses. I am of the view that there is no perversity or infirmity in appreciating the evidence on record and in returning the finding and arriving at the conclusion. The Court below had rightly acquitted the accused persons after considering the entire material on record.

I am of the considered view that the State has failed to prove the charges against the accused persons in any manner

much less beyond reasonable doubt. In the facts and circumstances, the present appeal is dismissed.

(Sanjay Karol), J.

September 3, 2007
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